

# ACCEPTANCE OF GIFTS

*State employees are sometimes offered gifts, favors, services, entertainment, food, or drink. This guide is not the full statement of the law but has been prepared to inform employees about 40 IAC 2-1-6 which governs acceptance of such items.*

## Basic Rule

1. If you have discretion to take some action toward the gift-giver, you are not permitted to accept a gift (except nominal advertising giveaways given to the general public).
2. If the situation is one in which you could not take discretionary action toward the gift-giver but the gift-giver has a business relationship with your agency, you may accept gifts having a value of \$25 or less.
3. Without written approval, you may not accept gifts with a value of more than \$25 in a calendar year from a gift-giver who has a business relationship with your agency.

### COMPLYING WITH THE GIFT RULE

When you receive or are offered a gift, take the following steps to determine whether you may accept it:

#### STEP 1

Review the list of items not considered gifts or otherwise exempt under the ethics rules (see "Gifts Which Are Permitted" in right-hand column). If the item or source is on that list, you may accept the gift. If the item is not on the list, take the next step.

#### STEP 2

Do you have discretion to take some action toward the gift-giver? If so, you may not accept the gift. If not, take the next step.

#### STEP 3

Does the gift-giver have a business relationship with your agency? (See definition of business relationship below.) If not, the gift may be accepted.

If there is a business relationship, does the gift amount to acceptance of gifts with a value of more than \$25 in a calendar year? If not, the gift may be accepted.

If there is a business relationship and the value amounts to acceptance of more than \$25 in a calendar year, you may not accept the gift(s) without the written approval of your agency head or state officer, or ethics officer.

### DEFINITION OF BUSINESS RELATIONSHIP

"Business relationship" means dealings of a person with an agency seeking, obtaining, establishing, maintaining, or implementing: (1) a pecuniary interest in a contract or purchase with the agency; or (2) a license or permit requiring the exercise of judgment or discretion by the agency. 40 IAC 2-1-4(d).

### RELATIVES, WAIVERS, POLITICAL CONTRIBUTIONS

A gift from a relative that would otherwise be prohibited by the gift rule may be accepted if it is valued at less than \$250. If the value of the otherwise prohibited gift from a relative is more than \$250, an employee needs to ask the State Ethics Commission for a waiver.

The State Ethics Commission is authorized to grant waivers of the gift rule for a legitimate public purpose.

Political contributions that are reported in accordance with law may be accepted.

### GIFTS WHICH ARE PERMITTED

1. Gifts from charitable, benevolent, or religious organizations and from public agencies or institutions.
2. Food or drink consumed at a public meeting to which 25 or more individuals are invited.
3. Mementos or souvenirs of nominal value received at public ceremonies or commemorating official business.
4. Invitations or tickets to charitable or political fund-raising events if the invitations or tickets are given by the charitable or political entity sponsoring the event. This exception does not apply to a gift of tickets from a person with a business relationship with the employee's agency.
5. Food or drink consumed by an employee or other reasonable courtesies extended to an employee during negotiations or other activities related to an economic development project.
6. Personal social relationships whereby nominal entertainment expenses are incurred or nominal personal mementos are exchanged on a reciprocal basis, so long as such expenses or mementos are not deducted as a business expense.

## Gifts Continued...

### GIFTS TO AN AGENCY

Gifts may be accepted by an employee on behalf of an agency and become state property. Some agencies have procedures which require approval of such gifts. Contact your agency head or ethics officer for advice.

Gifts of food and refreshments to a group within an agency with a nominal market value may be accepted and shared in the office, at the discretion of the agency head or ethics officer.

### GIFTS TO A SUPERIOR

Generally, there is no expectation that an employee is to give a gift to a superior. Employees should not feel pressured to give gifts or contribute to group gifts. An employee may give an item, food or refreshments to be shared in the office among employees, or personal hospitality.

*Example: For Christmas a secretary may give his supervisor, and the supervisor may accept, a poinsettia plant. The secretary may also invite the supervisor to a Christmas party in his home and the supervisor may attend.*

**Group gifts:** An employee may solicit voluntary contributions of nominal amounts from fellow employees for an appropriate gift to an official superior. An employee may collect a recommended contribution, but the recommendation must be coupled with a statement that the employee whose contribution is solicited is free to contribute less or nothing at all.

### GIFTS

#### BETWEEN EMPLOYEES

Generally, employees are permitted to give and receive gifts among themselves. However, a gift may not be accepted under circumstances in which it can reasonably be inferred that the gift would influence an employee to give special consideration to an action by such employee in his official capacity. (This is the language of the rule).

*Example: An employee has a second job that requires a license which must be approved by the Professional Licensing Agency. The employee makes a gift of tickets to a concert to her friend who is an employee of the Licensing Agency during a time approval of her license is pending at the agency. If the employee of the Licensing Agency is in a position to take some discretionary action concerning the license, he may not accept the tickets.*

If the gift is from an employee who has a business relationship with the receiving employee's agency, but that employee could not take any discretionary action, and the gift has a value of more than \$25, the receiving-employee should contact his or her agency head or ethics officer for approval.

In short, when the receiving-employee could take official action concerning the gift-giving employee or the gift-giving employee has a business relationship with the receiving-employee's agency, the rules described in steps 2 and 3 of "Complying with the Gift Rule" apply.

### WHAT TO DO WITH GIFTS YOU CAN'T ACCEPT

An employee who has received a gift which cannot be accepted shall return the item to the gift-giver or pay the gift-giver the market value. An agency may dispose of or return gifts at government expense.

When it is not practical to return an item (such as a perishable), the item may be given to a charity, shared within the office, or destroyed.

*Example: With the approval of the recipient's supervisor, a floral arrangement sent by an individual to a helpful employee in the Department of Insurance may be placed in the office's reception area.*

Employees who, on their own initiative, promptly consult their agency head or ethics officer to determine whether acceptance of an unsolicited gift is proper and who, upon advice, return or otherwise dispose of the gift, will be considered to have complied with the gift rule and not to have improperly accepted the gift.

### DEFINITION OF GIFT

"Gift" means the transfer or promise of a transfer of something of value regardless of the form without adequate and lawful consideration or consideration less than that required of others who are not employees, including the full or partial forgiveness of indebtedness, which is not extended to others who are not state employees on the same terms and conditions. However, "gift" does not include gifts from relatives of less than \$250 or campaign contributions subject to IC 3-9-2. 40 IAC 2-1-4(k).

## CONCLUSION

*Some agencies of the executive branch of state government have their own standards concerning the acceptance of gifts by their employees or on behalf of the agency. Employees are encouraged to seek advice if they have any questions. For guidance, contact your agency head, ethics officer, or the State Ethics Commission at*

*(317) 232-3850; fax number (317) 232-0707.*